

MINUTES OF MEETING OF THE CORPORATIONS COMMITTEE
November 4, 2005

A regular meeting of the Corporations Committee (the "Committee") of the Business Law Section of the State Bar of California was held at the Renaissance Montura Hotel, Los Angeles on November 4, 2005. Attendance was as follows:

MEMBERS PRESENT:

Clint Davis
Christopher A. Delfino
Bruce R. Deming
Matthew R. Gemello*
Steven R. Harmon*
Peter Heinecke*
Nina L. Hong*
Victor Hsu
Brian A. Lebrecht
Michael A. Occhiolini*
Deborah J. Ruosch
David M. Serepca
Lemoine Skinner, III
Jennifer Lynn Sostrin
Steven B. Stokdyk
James J. Thompson
Suzanne L. Weakley*
Bertha Cortes Willner

MEMBERS ABSENT:

Curt C. Barwick
Nelson D. Crandall
Stewart Laughlin McDowell
William R. Sawyers
Brian M. Wong
Russell J. Wood

LIAISONS AND GUESTS PRESENT:

Keith Bishop, Executive Committee*
Larry Doyle, State Bar of California, Office of Government Affairs*
Timothy L. Le Bas, Department of Corporations*
Peggy Sermon, Department of Corporations*

*Via telephone

The minutes summarize discussion primarily in the order items were listed on the Agenda for the meeting previously circulated to members of the Committee, which is not necessarily the order in which the items were actually taken up at the meeting. The Committee did not take up those topics listed on the Agenda that are not described in these minutes.

I. ADMINISTRATIVE MATTERS

1. Opening Remarks and Announcements: The meeting was called to order by Co-Chair Gemello, in attendance via telephone, at 9:30 a.m. Mr. Gemello thanked the members of the Committee in attendance and informed them that a quorum was present. Due to Mr. Gemello's attendance via telephone, Mr. Serepca proceeded as chair of the meeting.
2. Approval of Minutes: The minutes for the October 2005 meeting were approved in the form circulated (with minor corrections).

II. AGENCY AND LIAISONS' REPORTS

1. Department of Corporations: Tim Le Bas indicated that the AB 1000 report was submitted two months ago pursuant to the Governor's signature message, and that the report is still under review. He indicated that AB 153, concerning recovery of court costs in securities cases, was vetoed by the Governor. He also indicated that the Department is still in the process of reviewing the USA, internally. He also stated that the department will sponsor a technical clean-up bill, but nothing significant as it is expected to be a quiet year.
2. Secretary of State: In the absence of Betsy Bogart, Mr. Gemello presented the report from the Secretary of State. Mr. Gemello indicated that the Secretary of State's website (www.ss.ca.gov) has important information and that the Secretary of State encourages everyone to visit it. The Secretary of State is considering introducing an affirmative legislative proposal which would allow a company who has been the victim of the filing of an unauthorized Certificate of Dissolution to take action against the unauthorized filer. The legislative proposal would permit a court to force the unauthorized person to remedy the situation.
3. Corporate Law Departments: Steven Harmon reported that he spoke with Barry Tobias, Co-Chair of the Corporate Law Departments Committee (the "CLDC"). Mr. Harmon and Mr. Tobias discussed the CLDC's magazine project, "Inform." The magazine's main thrust is to recruit active membership to the committee and it is expected that the magazine will be published quarterly at a minimum. Mr. Tobias and his committee Co-Chair, Donna Diamond, will focus on membership this year. Mr. Tobias expressed interest in working with this Committee by holding a joint event or meeting. Mr. Harmon is waiting for further communication from Mr. Tobias in this regard.
4. Financial Institutions: Michael Occhiolini updated the Committee on the agenda for the last meeting of the Financial Institutions Committee.
5. Executive Committee: Keith Bishop reported that as Chief Financial Officer for the Executive Committee, he now has responsibility for the Committee's budget, and that of all other committees of the Business Section of the California Bar.

III. SUBCOMMITTEE REPORTS

1. Legislation:

a. October Board of Governors Report: Christopher Delfino reported that the Board of Governors approved all ALP's that were pending from last year.

b. Jury Waivers: The legislative subcommittee prepared a draft legislative proposal to address the California Supreme Court case *Grafton Partners, L.P. v. Superior Court* and the enforceability of contractual pre-trial jury waivers. The legislative proposal recommends amending California Code of Civil Procedure Section 631 to allow for contractual pre-trial jury waivers in agreements relating to transactions of \$300,000 or more. The amendment would have retroactive applicability. The legislative proposal was shared with the Financial Institutions Committee and posted to this Committee's extranet. The Committee discussed the approach of the draft legislative proposal and other possible approaches, such as tying the exception to the prohibition against pre-trial jury waivers to non-consumer transactions utilizing existing consumer definitions. If such an approach were taken, a dollar threshold would not be necessary. The Committee's general consensus was that the non-consumer transaction approach was preferable to the dollar threshold approach. The members of the Committee voted unanimously to authorize the legislative subcommittee to revise the draft legislative proposal and submit it to the Executive Committee.

c. Corporate Disclosure Act: The Committee discussed the possibility of a legislative proposal with respect to the California Corporate Disclosure Act and the strategy to be employed: repeal or amendment. It was suggested that perhaps simply adding a link from the form to a company's SEC filings would be sufficient. It was agreed that Mr. Deming would contact the Nevada Corporations Committee for information on the approach being taken in Nevada.

d. Calendar: The calendar for legislative proposals is to identify likely legislative proposals by January / February and have affirmative legislative proposals by June 1st. Mr. Delfino encouraged the Committee to email him ahead of time with ideas for possible legislative proposals so that they can be put on the agenda for the December meeting. The Committee revisited the *Vantage Point* decision dealing with § 2115 of the Corporations Code in light of the *Grosset v. Wenaas* decision. A subcommittee was formed to explore the pros and cons of a legislative proposal.

2. Communications/Website: Ms. Sostrin thanked the law firm of Fulbright and Jaworski for hosting the Committee's extranet site for another year. Ms. Sostrin informed the Committee that Susan Orloff from the California Bar has requested that all members set up member profiles on the California Bar website within the next thirty days. Members were reminded that the only way for a member to update her email address for purposes of the Committee's listserv is to update her member profile on the California Bar website. Email address changes are no

longer being processed by Ms. Orloff. Mr. Serepca and Ms. Sostrin informed the Committee that they will be fielding requests for e-bulletins. Anyone with suggestions for e-bulletin topics should contact Ms. Sostrin or Mr. Serepca. It was agreed that an e-bulletin on the topic of the *Grosset v. Wenaas* decision be emailed to the Committee's constituency base.

3. Education/Publications: Ms. Weakley reported that the January SEI program is on track. Msrs. Serepca and Lemoine will be presenters. Mr. Davis is working on an article to be published in the BLN regarding 2005 corporate law developments. The possibility of Msrs. Gemello and Wong writing an article regarding the 2005 Opinion Report was discussed. Mr. Bishop will be presenting a CLE teleconference on shareholder voting in February. The precise date is yet to be determined. Ms. Weakley reported that the CLE's teleconference technology now allows for interactive participation as an option.

IV. ONGOING PROJECTS

1. National Venture Capital Association Model Forms: Lemoine Skinner updated the Committee on the National Venture Capital Association Model Forms project. The Secretary of State's office has provided its comments on the form of Articles of Incorporation. Mr. Skinner informed the Committee that such comments are in no way to be construed as an official approval or an endorsement. The Secretary of State's office indicated that the "shadow" preferred provisions in the form of Articles of Incorporation are non-compliant because they do not set forth all of the terms of the preferred. The Committee discussed various approaches to address this. Mr. Skinner indicated that the law firm of Wilson Sonsini is reviewing the form documents and will get comments to the Committee by the end of the year. The Committee once again took of the topic of a form of legal opinion. Mr. Heinecke indicated that the Opinions Committee expressed an interest in forming a joint subcommittee to discuss how the principles in the Opinion Report might be applied in the venture capital context.
2. Close Corporation Model Act adoptions: Mr. Serepca gave the Committee an update on the Close Corporation Model Act. The following close corporation experts have volunteered to review and comment on the proposed Close Corporation Model Act: Mel Eisenberg (Boalt School of Law), Hugh Friedman (University of San Diego), Jim Fotenos (Greene, Radovsky, Maloney & Share LLP and the former Co-Chair of the Committee) and Brad Clark (O'Melveny & Myers). It has been requested that input be provided by the end of year, giving the Committee ample time to hit a June 2006 target for an ALP. An e-bulletin survey was sent out to the Committee's constituency base to gauge the prevalence of close corporations. One hundred seven responses were received to date. The results of the survey will be published on the Committee's extranet before the next meeting.
3. Report on Uniform Securities Act Amendments: Mr. Stokdyk reported that he received a telephone call from an Orrick lobbyist who volunteered her assistance

in connection with the USA project. Mr. Lemoine gave the Committee an overview of the differences between the transactions exempt under the Corporate Securities Law of 1968 (the “CSL”) and the transactions exempt under the USA. A summary of the differences was posted to the Committee’s extranet with the materials for this meeting. Mr. Deming gave the Committee an overview of differences between the CSL and the USA outside of the exemptions. A summary of such differences will be posted to the Committee’s extranet prior to the December meeting.

4. Legal Handbook for Incorporating a Business in California: Ms. Weakley indicated that the Legal Handbook for Incorporating a Business in California is almost ready to go to the Executive Committee. Ms. Weakley has completed her review, and volunteers from the law firm of Baker & McKenzie LLP are in the process of cite checking. Once Ms. Weakley’s comments are incorporated into the Handbook and the cite checking is complete, the Handbook will go to the Executive Committee.

V. NEW BUSINESS

1. Announcements: Mr. Gemello announced that all members of the Committee should have received copies of the 2005 Report, The Corporations Committee of the Business Law Section of the State Bar of California, Legal Opinions in Business Transactions (excluding the Remedies Opinion) and Russell Wood’s article “The California Fairness Hearing and The Exemption from Registration under Section 3(a)(10) of the Securities Act of 1933” which was published in Business Law News, Issue 3 2005.

The meeting was adjourned at approximately 11:25 a.m.



Bertha Cortes Willner, Secretary